SYNOPSIS

SPECIAL LEAVE APPEAL- CRITICAL APPRAISAL

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Branch: Law Year: 2011

The study concentrates on the Supreme Court's appellate jurisdiction over administrative decisions under article 136 of the Constitution of India. The very novelty of the provision provided the Court an opportunity to evolve norms based in principles in the exercise of the power. The study attempts on inquiry how far the Court was successful in this respect.

Supremacy of justice has a wider connotation in the socio-legal sphere. It upholds the sanctity of the legal system in meting out justice to whoever knocks the doors. *Satyameva Jayate* is said to encapture the essence of the visions and ideals of judicial system in India. Judiciary by punishing the guilty infuses faith in the citizens regarding supremacy of law and omnipotence of justice.

The Constitution adopted a unified judicial system with Supreme Court at the apex. The Constitution confers a broad jurisdiction to the Court. It is multi-jurisdictional and is the most powerful apex court. Extraordinary appellate jurisdiction of the Court under article 136 to entertain appeals from courts and tribunals is significant due to wide discretionary power. The Constituent Assembly left the matter to the good sense of the Court to define and delineate the province of the jurisdiction. The Supreme Court characterized it as "untrammeled reservoir of power incapable of being confined to definitional bounds; the discretion conferred on the Supreme Court being subjected to only one limitation, that is, the wisdom and good sense of justice of the judges". The power to hear appeal is full-fledged on facts, law and discretion. The power is even exercised with respect to interlocutory orders. The *non-obstante* clause makes it special and unlimited by other provisions of the Constitution.

Special leave appellate jurisdiction directly from orders of tribunals makes the Court unique among other appellate courts. The use of the term 'tribunal' in article 136 has an ever widening connotation and makes it a general appellate court in administrative matters. However, *L.*

Chandrakumar v. *Union of India* exposes how such a wide ranged jurisdiction may be affected by false assumptions of legal concepts.

The extension of governmental operations in the last century gave rise to disputes needing adjudication. This led to evolution of administrative process. Side by side with the courts these bodies exercise adjudicatory powers. As innumerable adjudicatory bodies function outside the judicial hierarchy, ordinary judicial courts took up the power to correct any misuse of power or procedural irregularities by administrative bodies. But article 136 was an extreme step to empower the apex court of the judicial system to redecide matters left for decision by administrative bodies.

In administrative law tribunals are created on the presumption that civil courts lack expertise in revenue and other specialized areas. The very fact that legislature sets up tribunal and transfers the jurisdiction exercised by ordinary courts shows that civil courts are incompetent to deal with the matter. A later full- fledged appeal from decisions of experts to an ordinary appellate court, however high it might be, is negation of rationale behind the creation of tribunals and administrative justice. It is a reversal of administrative ideology. The justifications for constitution of administrative tribunals like inexpertise, delay, cumbersome and costly procedure of the ordinary courts, break down in doing so. In this context it has become necessary to analyze the exercise of the jurisdiction while admitting and hearing appeals directly from tribunals. The Supreme Court should have evolved a comprehensive admission policy and policy of review laying down general principles and norms and standards for the tribunal to follow, if possible even without such a full-fledged appellate power. The area is fascinating and the inquiry is how far the Court has been successful in exercising this vast uncontrolled power vested by the Constitution. The object of the study is possible only by a critical analysis of judgments pronounced by the apex court since its inception.

The Supreme Court may not act as a general court of appeal over various tribunals in the country. To start with the Court seems to have entertained some such idea. However, that did not last long. This resulted in making other provisions for appeals to the Supreme Court almost redundant. Such expansion of the scope of article 136 even resulted in docket explosion in the Court. It is in this background the study was undertaken.

The methodology adopted is totally doctrinaire. A study of operational dynamics in respect of the exercise of jurisdiction over tribunals has been undertaken with certain obvious suggestions. The study, as the theme demands, is exclusively confined to direct appeals from tribunals and never examines cases reaching the Court through High Courts. Such a course is necessary because when the Court hears appeals from decisions of High Courts, the power is restricted to that of High Courts. The enormity of the appellate power in its full magnitude and stature may be observed only in appeals directly from decisions of tribunals. An appeal directly from the order of a tribunal is much different from an appeal from decision challenging the order of High Court. In the former case the decision of the tribunal is before the Court. The merits of the case may be looked into. The court may peruse the entire case, even evidence taken. While hearing an appeal, the appellate court can reconsider both questions of fact as well as law. It can appreciate evidence for itself on merits and substitute its own findings of fact for those of the lower adjudicatory body. This course is not possible when Court considers appeals from High Courts, where court can only examine whether the decision of High Court is valid.

The Court tried its level best to confine the jurisdiction. Several learned judges tried to lay down grounds and circumstances for interference in orders of tribunals. But such efforts were not successful. Individual judges had their own notions regarding admission policy and interference with decisions. Because of this parties preferred a special leave petition though it was very costly and beyond means. Recently there is a sudden fall in the number of direct appeals from decisions of tribunals. Hence the dissertation attempts a detailed study of the area.

For successful completion of the work a visit was made to the Supreme Court in August 2009. The methods adopted by the Supreme Court Registry for registering special leave petitions and the procedures for admission were examined. The matter was discussed with the Registrar of the Supreme Court. The libraries of Supreme Court, Parliament and that of Indian Law Institute at New Delhi were accessed for the study.

The research identifies the extra ordinary appellate jurisdiction of the Supreme Court under article 136, the vision of Constitutional Assembly and the Supreme Court's power to interpret article 136, merits and limitations, of the extraordinary jurisdiction, whether there is a need to reform article 136, the impact of *L. Chandrakumar* and its aftermath.

The entire lay out of the thesis is spread out in eleven chapters. The Introductory Chapter examines the scope and objective of the study. The importance of extraordinary jurisdiction especially while dealing with orders of tribunals is also discussed. Admission policy laid down by Supreme Court and other statutory restraints are the object of study in the Chapter II. The meaning of 'tribunal' under article 136 is analyzed in Chapter III. The Supreme Court has distinguished 'tribunal' from a court. The special features of tribunals, purpose of formation and functioning are the focus of the study in Chapter 1V. The intervention of the Court with decisions of industrial tribunal and labour court are critically evaluated in Chapter V. Victimization of employees by dragging them to the apex court by employer, who can afford the enormous expense, may be noticed often. But it is interesting to note that in majority of appeals the petitioner happened to be management or employees' unions. In Chapter V1 appeals directly from administrative tribunals are discussed. The Supreme Court, though considered the Administrative Tribunals as supplemental to High Court, the power, infrastructure, independence, dignity etc. provided to them are totally different. By equating them with the High Court to entertain writs, they are also treated as a court of first instance. The decisions from other tribunals like income- tax, sales-tax, land tribunal, consumer forums, railway tribunal etc are examined in Chapter VII.

The concept of judicial review and jurisdiction to redecide is analyzed in Chapter VIII. The parliamentary debates, object and reasons for insertion of articles 343A and 343B, which excluded the jurisdiction of all courts except Supreme Court under article 136, are also discussed to understand the legislative intention.

In Chapter IX two landmark judgments like *Sampathkumar* and *Chandrakumar* are critically analyzed to disclose the vagaries of judicial attitude. The decisions after *L. Chandrakumar* reveal that jurisdiction of the Court under article 136 has dwindled. It is the law that it can only accommodate appeals from division bench of High Courts. The enormous power to deal with appeals directly from tribunals is nonexistant. The aftermath of *L. Chandrakumar* is dealt with in Chapter X. In the concluding Chapter XI the recommendation of *Report of 215th Law Commission* to reconsider *L.Chandrakumar* is examined. The inferences arrived at in different chapters are summarized and solutions and suggestions are given for wholesome functioning of

tribunals with minimum interference of the Supreme Court under the special leave jurisdiction, which is only to redress grave miscarriage of justice.

While exercising the jurisdiction under article 136, the Court has to stick on to some basic principles at the admission stage itself. The admission policy of the court without any sound principle has resulted in docket explosion. Recently Justice Markandey Katju and Justice R.M. Lodha expressed[1] anguish in converting the Supreme Court into an ordinary appellate court. Special leave petitions are being filed against every kind of orders, for instance from order allowing amendment petition, order condoning delay etc. This results in mounting of arrears. They opined that an authoritative decision by a Constitution Bench should lay down some broad guidelines as to when discretion under article 136 should be entertained. The Court was forced to impose self-limitations prescribing criteria for regulating inflow of appeals. The task of a gateman is really tough when aspiring incomers are too large in number. The Court after an initial exercise of trial and error found itself compelled to declare certain norms. The declared policy was one of nonintervention with exercise of discretion. But for compelling reasons, it permitted a free hand in respect of questions of law. The litigant has to wait for decades towards the fag end of life to get justice. On many occasions, especially in service disputes, an employee obtains a reinstatement order long after retirement. An effective mechanism should be opted by the court for the operation of special leave valve. But a critical survey of the case law under the jurisdiction testifies that the policy has been more honored in breach than by observance. Since the object of this significant power is to undo grave injustice, the generous approach of the Court during admission of special leave appeals reaps adverse effects. Equally a strict approach without discretion may result in perpetrating injustice.

The purpose of formation of tribunals will best be served by restructuring it with hierarchy of appellate tribunals with a National Tribunal at the apex. In order to reduce the mounting arrears in High Courts and Supreme Court, it is suggested that a National Tribunal is required at the apex of the various specialized tribunals. This would help to achieve uniformity in diversified opinions of various appellate tribunals and High Courts. The systematic study of cases from 1950 onwards suggests that the following categories of issues should only be entertained under article 136 for a better administrative adjudication. They are:

[1] *Mathai@Joby v. George,* (2010) 4 SCC 358.

1. Matters involving constitutional interpretation;
2. Matters of public importance;
3. Uniformity in the decisions of High Courts and various appellate tribunals; and
4. When there is gross violation of human rights.

Strict compliance of the guidelines will inculcate confidence in litigants and that will help to elevate the dignity of the apex court to maximum.